

## Article 5.

### Deposits and Bonds by Insurance Companies.

#### **§ 58-5-1. Deposits; use of master trust.**

Notwithstanding any other provision of law, the Commissioner is authorized to select a bank or trust company as master trustee to hold cash or securities to be pledged to the State when deposited with him pursuant to statute. Securities may be held by the master trustee in any form which, in fact, perfects the security interest of the State in the securities. The Commissioner shall by rule establish the manner in which the master trust shall operate. The master trustee may charge the person making the deposit reasonable fees for services rendered in connection with the operation of the trust. (1985, c. 666, s. 55; 1987, c. 864, s. 23.)

#### **§ 58-5-5. Amount of deposits required of foreign or alien fire and/or marine insurance companies.**

Unless otherwise provided in this Article, every fire, marine, or fire and marine insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of one hundred thousand dollars (\$100,000) market value. (1909, c. 923, s. 1; 1911, c. 164, s. 1; Ex. Sess. 1913, c. 62, ss. 1, 2, 3; 1915, c. 166, s. 6; C.S., s. 6442; 1933, c. 60; 1945, c. 384; 1991, c. 681, s. 15; 2003-212, s. 1.)

#### **§ 58-5-10. Amount of deposits required of foreign or alien fidelity, surety and casualty insurance companies.**

Unless otherwise provided in this Article, every fidelity, surety or casualty insurance company chartered by any other state or foreign government shall make and maintain deposits of securities with the Commissioner in the amount of two hundred thousand dollars (\$200,000) market value. (1945, c. 384; 1991, c. 681, s. 16; 2003-212, s. 2.)

#### **§ 58-5-15. Minimum deposit required upon admission.**

Upon admission to do business in the State of North Carolina every foreign or alien fire, marine, or fire and marine, fidelity, surety or casualty company shall deposit with the Commissioner securities in the amounts required under G.S. 58-5-5 and G.S. 58-5-10. (1945, c. 384; 1991, c. 681, s. 17; 2001-487, s. 18.)

#### **§ 58-5-20. Type of deposits.**

The deposits required to be made under G.S. 58-5-5, 58-5-10, and 58-5-50 shall be composed of:

- (a) Interest-bearing bonds of the United States of America;
- (b) Interest-bearing bonds of the State of North Carolina, or of its cities or counties;  
or
- (c) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina. (1945, c. 384; 1989, c. 485, s. 34; 1991, c. 681, s. 18.)

#### **§ 58-5-25. Replacements upon depreciation of securities.**

Whenever any of the securities deposited by companies under the provisions of G.S. 58-5-5, 58-5-10, and 58-5-50 shall be depreciated or reduced in value, such company shall forthwith increase the deposit in order to maintain the required deposit in accordance with the amounts required by the said sections. (1945, c. 384; 1989, c. 485, s. 34.)

**§ 58-5-30. Power of attorney.**

With the securities deposited in accordance with G.S. 58-5-5, 58-5-10, and 58-5-50 the company shall at the same time deliver to the Commissioner a power of attorney executed by its president and secretary or other proper officers authorizing the sale or transfer of said securities or any part thereof for the purpose of paying any of the liabilities provided for in this Article. (1945, c. 384; 1989, c. 485, s. 34; 1991, c. 720, s. 4.)

**§ 58-5-35. Securities held by Treasurer; faith of State pledged therefor; nontaxable.**

Unless a master trustee is selected by the Commissioner pursuant to G.S. 58-5-1, the securities required to be deposited by each insurance company in this Article shall be delivered for safekeeping by the Commissioner to the Treasurer of the State who shall receipt him therefor. For the securities so deposited the faith of the State is pledged that they shall be returned to the companies entitled to receive them or disposed of as herein provided for. The securities deposited by any company under this Article shall not, on account of such securities being in this State, be subjected to taxation but shall be held exclusively and solely for the protection of contract holders. (1945, c. 384; 1985, c. 666, s. 56.)

**§ 58-5-40. Authority to increase deposit.**

When, in the Commissioner's opinion, it is necessary for the protection of the public interest to increase the amount of deposits specified in G.S. 58-5-5, 58-5-10, 58-5-50, and 58-5-55, the companies described in those sections shall, upon demand, make additional deposits in such sums as the Commissioner may require, and those additional deposits shall be held in accordance with and for the purposes set out in this Article, and shall comprise:

- (a) Interest-bearing bonds of the United States of America;
- (b) Interest-bearing bonds of the State of North Carolina or of its cities or counties;
- (c) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina;
- (d) Interest-bearing AA or better rated corporate bonds and classified as investment grade in the latest NAIC Securities Valuation Manual; or
- (e) Other interest-bearing bonds or notes considered to be acceptable by the Commissioner on a case by case basis. (1945, c. 384; 1989, c. 485, s. 34; 1991, c. 681, s. 19.)

**§ 58-5-45: Repealed by Session Laws 1991, c. 681, s. 21.**

**§ 58-5-50. Deposits of foreign life insurance companies.**

In addition to other requirements of this Chapter, all foreign life insurance companies shall deposit securities, as specified in G.S. 58-5-20, that have a market value of four hundred thousand

dollars (\$400,000) as a prerequisite of doing business in this State. All foreign life insurance companies shall deposit an additional two hundred thousand dollars (\$200,000) where such companies cannot show three years of net income before being licensed in this State. (1989, c. 485, s. 35; 2003-212, s. 3; 2005-215, s. 3; 2008-124, s. 2.1.)

**§ 58-5-55. Deposits of capital and surplus by domestic insurance companies.**

(a) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic stock insurance companies shall deposit their required statutory capital with the Commissioner, and all domestic nonstock insurance companies shall deposit their required statutory surplus with the Commissioner. Such deposits shall be under the exclusive control of the Commissioner for the protection of policyholders.

(b) In addition to other requirements of Articles 1 through 64 of this Chapter, all domestic mutual insurance companies shall deposit at least fifty percent (50%) of their minimum required surplus with the Commissioner, with the amount of the deposit to be determined by the Commissioner. Such deposits shall be under the exclusive control of the Commissioner for the protection of policyholders.

(c) Deposits fulfilling the requirements of this section shall comprise:

- (1) Interest-bearing bonds of the United States of America;
- (2) Interest-bearing bonds of the State of North Carolina or of its cities or counties; or
- (3) Certificates of deposit issued by any solvent bank domesticated in the State of North Carolina. (1989, c. 485, s. 35; 1991, c. 681, s. 20; 1993, c. 504, s. 3; 2008-124, s. 2.5; 2015-281, s. 7.)

**§ 58-5-60: Repealed by Session Laws 1995, c. 193, s. 8.**

**§ 58-5-63. Interest; liquidation of deposits for liabilities.**

(a) All insurance companies making deposits under this Article are entitled to interest on those deposits. The right to interest is subject to a company paying its insurance policy liabilities. If any company fails to pay those liabilities, interest accruing after the failure is payable to the Commissioner for the payment of those liabilities under subsection (b) of this section.

(b) If any company fails to pay its insurance policy liabilities after those liabilities have been established by settlement or final adjudication, the Commissioner may liquidate the amount of the company's deposit and accrued interest specified in subsection (a) of this section that will satisfy the company's policy liabilities and make payment to the person to whom the liability is owed. After payment has been made, the Commissioner may require the company to deposit the amount paid out under this subsection. As used in this section, "insurance policy" includes a policy written by a surety bondsman under Article 71 of this Chapter.

(c) Notwithstanding the provisions of G.S. 58-5-70, if any company that is or has been the subject of supervision or rehabilitation proceedings fails to pay its liabilities for temporary disability payments or emergency medical expenses under policies of workers' compensation insurance, the Commissioner shall liquidate the company's deposits and accrued interest and shall use the proceeds to pay such liabilities until that company becomes the subject of a final order of

liquidation with a finding of insolvency that has not been stayed or been the subject of a writ of supersedeas or other comparable order. The Commissioner also may enter into one or more contracts to handle the administration of the identification and payment of such liabilities, and to the extent such a contract is entered into, the contractor and its employees, agents, and attorneys, shall have immunity of the same scope and extent as an employee of the State acting in the course and scope of the public duties of such employment. After an order of liquidation with a finding of insolvency has been entered by a court of competent jurisdiction that has not been stayed or been the subject of a writ of supersedeas or other comparable order, then the balance of the proceeds, if any, shall be delivered to the North Carolina Insurance Guaranty Association in accordance with G.S. 58-48-95. To the extent that any payment made hereunder reduces the ratable amount payable to policyholders under G.S. 58-5-70, the liens obtained by the North Carolina Insurance Guaranty Association pursuant to Article 48 of this Chapter shall be reduced to such extent as necessary to permit the policyholders to be paid the ratable share that would have been due but for such payments. (1995, c. 193, s. 11; 1999-294, s. 8; 2001-223, s. 23.2; 2002-185, s. 8.)

Articles 1 through 64 of this Chapter may be cited and shall be known as the Insurance Law.  
(1899, c. 54; Rev., s. 4677; C.S., s. 6260.)

**§ 58-5-65: Repealed by Session Laws 1995, c. 193, s. 8.**

**§ 58-5-70. Lien of policyholders; action to enforce.**

Upon the securities deposited with the Commissioner by any foreign or alien insurance company, the holders of all contracts of the company who are citizens or residents of this State at the time, or who hold policies issued upon property in the State, shall have a lien for amounts in excess of fifty dollars (\$50.00) due them, respectively, under or in consequence of the contracts for losses, equitable values, return premiums, or otherwise, and shall be entitled to be paid ratably out of the proceeds of the securities, if the proceeds are not sufficient to pay all of the contract holders. When any foreign or alien insurance company depositing securities under this Article becomes insolvent or bankrupt or makes an assignment for the benefit of its creditors, any holder of the contract may begin an action in the Superior Court of the County of Wake to enforce the lien for the benefit of all the holders of the contracts. The Commissioner shall be a party to the suit, and the funds shall be distributed by the court, but the cost of the action shall not be adjudged against the Commissioner. (1909, c. 923, s. 4; C.S., s. 6445; 1991, c. 720, s. 4; 1995, c. 193, s. 12; 2001-223, s. 24.1; 2001-487, s. 103(a).)

**§ 58-5-71. Liens of policyholders; subordination.**

Liens against the deposit of a foreign insurer under G.S. 58-5-70 shall be subordinated to the reasonable and necessary expenses of the Commissioner in liquidating the deposit and paying the special deposit claims. "Special deposit claims" has the same meaning set forth in G.S. 58-30-10(19). (1993 (Reg. Sess., 1994), c. 678, s. 7; 2008-124, s. 2.4.)

**§ 58-5-75. Substitution for securities paid.**

Where the principal of any of the securities so deposited is paid to the Commissioner, he shall notify the company or its agent in this State, and pay the money so received to the company upon receiving other securities of the character named in this Article to an equal amount, or, upon the

failure of the company for 30 days after receiving notice to deliver such securities to an equal amount to the Commissioner, he may invest the money in any such securities and hold the same as he held those which were paid. (1909, c. 923, s. 5; C.S., s. 6446; 1991, c. 720, s. 4.)

**§ 58-5-80. Return of deposits.**

If such company ceases to do business in this State and its liabilities, whether fixed or contingent upon its contracts, to persons residing in this State or having policies upon property situated in this State have been satisfied or have been terminated, or have been fully reinsured, with the approval of the Commissioner, in a solvent company licensed to do an insurance business in North Carolina approved by the Commissioner, upon satisfactory evidence of this fact to the Commissioner the State Treasurer or the trustee selected pursuant to G.S. 58-5-1 shall deliver to such company, upon the order of the Commissioner, the securities in his possession belonging to it, or such of them as remain after paying the liabilities aforesaid. (1909, c. 923, s. 6; C.S., s. 6447; 1951, c. 781, s. 1; 1985, c. 666, s. 57; 1991, c. 720, s. 4.)

**§ 58-5-85: Repealed by Session Laws 1991, c. 681, s. 21.**

**§ 58-5-90. Deposits held in trust by Commissioner or Treasurer.**

(a) Deposits by Domestic Company. – The Commissioner or the Treasurer, in that officer's official capacity, shall take and hold in trust deposits made by any domestic insurance company for the benefit of all of the insurer's policyholders and for the purpose of complying with the laws of any other state to enable the company to do business in that state. The company making the deposits is entitled to the income thereof, and may, from time to time, with the consent of the Commissioner or Treasurer, and when not forbidden by the law under which the deposit was made, change in whole or in part the securities which compose the deposit for other solvent securities of equal par value. Upon request of any domestic insurance company the Commissioner or the Treasurer may return to the company the whole or any portion of the securities of the company held by the officer on deposit, when the officer is satisfied that the deposits are subject to no liability and are no longer required to be held by any provision of law or purpose of the original deposit.

(b) Deposits by Foreign or Alien Company. – The Commissioner or Treasurer, in that respective officer's official capacity, shall take and hold in trust deposits made by any foreign or alien insurance company for the benefit of the holders of all insurance contracts of the company who are citizens or residents of this State or who hold policies issued upon property in this State in accordance with G.S. 58-5-70. The Commissioner or Treasurer may return to the trustees or other representatives authorized for that purpose any deposit made by a foreign or alien insurance company, when it appears that the company has ceased to do business in the State and is under no obligation to policyholders or other persons in the State for whose benefit the deposit was made.

(c) Action to Enforce or Terminate the Trust. – An insurance company which has made a deposit in this State pursuant to Articles 1 through 64 of this Chapter, or its trustees or resident managers in the United States, or the Commissioner, or any creditor of the company, may at any time bring an action in the Superior Court of Wake County against the State and other parties properly joined therein, to enforce, administer, or terminate the trust created by the deposit. The process in this action shall be served on the officer of the State having the deposit, who shall appear and answer in behalf of the State and perform such orders and judgments as the court may make

in such action. (1899, c. 54, s. 17; 1901, c. 391, s. 2; 1903, c. 438, s. 1; c. 536, s. 4; Rev., s. 4709; C.S., s. 6313; 1945, c. 384; 1991, c. 720, s. 4; 2005-215, s. 4.)

**§ 58-5-95. Deposits subject to approval and control of Commissioner.**

The deposits of securities required to be made by any insurance company of this State shall be approved by the Commissioner of the State, and he may examine them at all times, and may order all or any part thereof changed for better security, and no change or transfer of the same may be made without his assent. (1903, c. 536, s. 5; Rev., s. 4710; C.S., s. 6314; 1945, c. 384; 1991, c. 720, s. 4.)

**§ 58-5-100. Deposits by alien companies required and regulated.**

An alien company, other than life, shall not be admitted to do business in this State until, in addition to complying with the conditions by law prescribed for the licensing and admission of such companies to do business in this State, it has made a deposit with the Treasurer or Commissioner, or with the financial officer of some other state of the United States, of a sum not less than the capital required of like companies under Articles 1 through 64 of this Chapter. This deposit must be in exclusive trust for the benefit and security of all the company's policyholders and creditors in the United States, and may be made in the securities, but subject to the limitations, specified in Articles 1 through 64 of this Chapter with regard to the investment of the capital of domestic companies formed and organized under the provisions of Articles 1 through 64 of this Chapter. The deposit shall be deemed for all purposes of the insurance law the capital of the company making it. (1899, c. 54, s. 64; 1903, c. 438, s. 6; Rev., s. 4711; C.S., s. 6315; 1945, c. 384; 1991, c. 720, s. 52.)

**§ 58-5-105. Deposits by life companies not chartered in United States.**

Every alien life insurance company organized under the laws of any other country than the United States must have and keep on deposit with some state insurance department or in the hands of trustees, in exclusive trust for the security of its contracts with policyholders in the United States, funds of an amount equal to the net value of all its policies in the United States and not less than three hundred thousand dollars (\$300,000). (1899, c. 54, s. 56; Rev., s. 4712; C.S., s. 6316; 1945, c. 384.)

**§ 58-5-110. Registration of bonds deposited in name of Treasurer or Commissioner.**

The Commissioner is hereby empowered, upon the written consent of any insurance company depositing with the Commissioner or the State Treasurer under any law of this State, any state, county, city, or town bonds or notes which are payable to bearer, to cause such bonds or notes to be registered as to the principal thereof in lawful books of registry kept by or in behalf of the issuing state, county, city or town, such registration to be in the name of the Treasurer of North Carolina or the Commissioner in trust for the company depositing the notes or bonds and the State of North Carolina, as their respective interest may appear, and is further empowered to require of any and all such companies the filing of written consent to such registration as a condition precedent to the right of making any such deposit or right to continue any such deposit heretofore made. (1925, c. 145, s. 2; 1945, c. 384; 1985, c. 666, s. 58; 1991, c. 720, s. 4.)

**§ 58-5-115. Notation of registration; release.**

Bonds or notes so registered shall bear notation of such registration on the reverse thereof, signed by the registering officer or agent, and may be released from such registration and may be transferred on such books of registry by the signature of the State Treasurer or Commissioner. (1925, c. 145, s. 3; 1945, c. 384; 1985, c. 666, s. 59.)

**§ 58-5-120. Expenses of registration.**

The necessary expenses of procuring such registration and any transfer thereof shall be paid by the company making the deposits. (1925, c. 145, s. 4; 1945, c. 384.)

**§ 58-5-125: Repealed by Session Laws 1991, c. 681, s. 21.**